The Planning Inspectorate

Appeal Decision

Inquiry opened on 4 April 2017

Site visit made on 4 April 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 April 2017

Appeal A Ref: APP/R3325/C/16/3155519
Land on the south side of Jarmine Orchard, Jarmany Hill, Barton St David, Somerton, Somerset TA11 6DA [hereinafter "the Land"]

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Christopher Black against an enforcement notice issued by South Somerset District Council.
- The notice was issued on 10 June 2016.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from agricultural to a mixed use of agricultural, residential and communal use by means of: i) the siting of caravans, vehicles and mobile structures on the Land for residential purposes and human habitation including: a. the siting of a pair of touring caravans for residential use and residential storage (identified in photograph A and B attached to [the] notice); b. the siting of a traditional gypsy style touring caravan for residential use (identified in photograph C attached to [the] notice); and c. the siting of 2 railway carriages on trailers for residential use (identified in photograph D attached to [the] notice); ii) human habitation of the building identified on the plan marked with a red cross on the plan and photograph E attached to this notice (the "Building") for the purposes of residential occupation; and, iii) communal use of the Building and its facilities for non-agricultural purposes including but not limited to communal sharing of kitchen facilities for food preparation and cooking.
- The requirements of the notice are: (i) Cease all non-agricultural use of the Building and the Land; (ii) Permanently remove from the Building and the Land all items, fixtures and fittings and equipment used for non-agricultural purposes. This shall include but is not limited to beds and bedding, cooking equipment and cooker(s), heating and hot water supply for domestic purposes and all domestic paraphernalia; (iii) Permanently remove from the Land all caravans, mobile structures and vehicles used for residential purposes and human habitation including but not limited to: a) Removal from the Land the pair of touring caravans identified in photograph[s] A and B attached to [the] notice; b) Removal from the Land the traditional gypsy style touring caravan (identified in photograph C attached to [the] notice; c) Removal from the Land the 2 railway carriages on trailers (identified in photograph D attached to [the] notice; (iv) Restore the Land to its condition prior to the change of use from agriculture to mixed use of agriculture and residential. This notice does not prevent or restrict you from using the Land or the Building for the purposes of agriculture. You may keep any equipment, machinery or items that you use for the purposes of agriculture on the Land. You may keep on the Land for agricultural use purposes the touring caravan identified in photograph F attached to [the] notice which may have been on the Land for in excess of 10 years. The notice does not prevent the retention of the hardstanding in the location identified on the plan with a blue cross for agricultural use purposes.
- The period for compliance with these requirements is 6 calendar months.
- The appeal was lodged on the ground set out in section 174(2) (d) of the Act [but see below]. Since the prescribed fees have not been paid within the specified period ground (a), which comprises a deemed planning application, does not fall to be considered.
- The Inquiry sat for 2 days and evidence from all witnesses was taken on oath.

Appeal B Ref: APP/R3325/X/16/3155520
Land OS 1021, Jarmany Hill, Barton St David, Somerton, TA11 6DA

- The appeal is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development [LDC].
- The appeal is made by Mr Christopher Black against the decision of South Somerset District Council.
- The application (Ref. 15/04697/COL), dated 15 October 2015, was refused by notice dated 10 June 2016.
- The application was made under section 191(1)(a) and (b) of the Act.
- The development for which an LDC is sought is *"Use of agricultural building as a single dwelling dwelling house together with associated residential garden and parking areas"*.

Appeal A: Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B: Decision

2. The appeal is dismissed.

Both appeals: *Procedural matters*

3. In opening the Inquiry I ran through a number of procedural matters that had been flagged on my agenda, which was circulated to the main parties ahead of convening the event. The key issue arising is that whereas the Council has drafted the allegation in the notice by reference to, amongst other things, human habitation of a building and the 10-year immunity period[1], Appeal B claims that the building was erected more than 4-years previously[2] and is used as a dwelling, which is also the subject of a 4-year immunity period[3]. Whilst what was at that stage a draft Statement of Common Ground said[4] that the parties did not consider it was necessary to introduce a ground (b), I disagree.

4. At the heart of the difference between the manner in which the notice and the LDC are expressed is a disagreement as to what has taken place as a matter of fact, i.e. whether the building is a single dwelling house or not. The Planning Practice Guidance ['the Guidance'] makes clear that: "*in enforcement and lawful development certificate appeals, the onus of proof on matters of fact is on the appellant*"[5]. Whereas ground (d) relates to whether immunity has been demonstrated over the requisite time period[s], ground (b) relates to whether the alleged breach has occurred as a matter of fact. The absence of ground (b) could be seen as a way to get around applying the burden of proof and in any event I need to establish what has taken place as a matter of fact in order to know which immunity period to apply. Accordingly I ruled that if the Appellant wanted to dispute the Council's allegation in Appeal A that a ground (b) should be introduced and, following confirmation from the Appellant, it was admitted.

5. In what follows [*numbers in square brackets*] refer to preceding paragraphs.

Both appeals: *What weight should be attributed to the forms of evidence?*

6. Paragraph 5.2 of Mr Miller's proof of evidence sets out what he calls a hierarchy of evidence and in broad terms I agree. It is appropriate to attach the greatest weight to oral testimony, given by oath or affirmation, which has been subject

[1] Section 171B(3) of the Act.
[2] Section 171B(1) of the Act.
[3] Section 171B(2) of the Act.
[4] Retained in the signed and agreed version, Document 6.
[5] Source of quote: paragraph ID: 16-053-20140306.

to cross-examination. Photographic evidence can be given substantial weight where its date of origin is clearly established. Other contemporary documents can be given significant weight. Sworn statements, where the witness did not attend and hence was not subject to cross-examination at the Inquiry, can be important. However the weight to be given to such evidence may be reduced where it is ambiguous, relies on hearsay evidence, or where it conflicts with testimony that has been cross-examined. Unsworn letters and emails can only be given limited weight as a form of evidence in these types of appeals.

7. The missing evidence[6] that was before the Council when it considered the LDC application, now the subject of Appeal B, was given to me just prior to opening the Inquiry and I have taken all of it into account. This included a statutory declaration from Keith Dobson who did not give oral evidence at the Inquiry. I have no reason to doubt that Mr Dobson lives in the nearest dwelling and that he spends a great deal of time at home, including his garden, and that he can observe movements to and from the site. However, whilst Mr Dobson says that based on his daily observations he finds it impossible to believe that the site has been in continuous residential occupation, since he makes no claim to have clear views of the Land itself, distinct from the access and entrance, or to have been on the site, I can only attach moderate weight to his belief.

8. Although I have no reason to dispute that his conversation with the Appellant took place in September 2012, I cannot rule out the possibility that Mr Dobson might have misunderstood what was being said, might not have remembered it correctly or that the Appellant was not being completely open with Mr Dobson. Ultimately in this aspect of his statutory declaration, Mr Dobson is relying on something that he was told over 3-years before he made his statutory declaration, distinct from what he observed to be actually taking place on the Land and/or in the building. For all of these reasons I am only able to attach moderate weight to the contents of Mr Dobson's statutory declaration.

9. The other statutory declaration that is before the Inquiry from a witness who did not give oral evidence is that of Rohan Black, the Appellant's son. He would have been a key witness given that his statutory declaration says that he was instrumental in converting the barn into living accommodation. However given the dispute between his parents I can understand why he chose not to attend.

10. The Guidance makes clear an Applicant is responsible for providing sufficient information to support an application for a LDC. It states: "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability*"[7].

11. Rohan Black's statutory declaration says: "*I lived permanently in the building from then until November 2013 when I moved to a flat in Glastonbury. I moved back to Jarmany Hill in April 2014 with my girlfriend until September 2014…*". I can accept, by reference to the previous unnumbered paragraph, that the word "*then*" in the first sentence of this quote can reasonably be read to be September 2011. However I reject any claim that the second sentence can be interpreted in the context of the first to mean that Rohan Black moved back *into the building* at Jarmany Hill in April 2014. It appears to be common

[6] As listed at point 1, procedural matters, on my agenda.
[7] Source of quote: paragraph ID: 17c-006-20140306.

ground between Miss Simpson and the Appellant that he lived on the Land during the period from April to September 2014, but this passage from Rohan Black's statutory declaration is imprecise and ambiguous as to whether he resided in the building during that period or simply on the Land. For these reasons I attach moderate weight to Rohan Black's statutory declaration.

12. I acknowledge that Rohan Black sought to clarify this aspect of his statutory declaration in an email dated 1 December 2015 [19:44 hours]. The relevant passage says: "*In regards to the points made by my Mother, Sarah Simpson, most of what she has said is absolutely correct, except that the shed has been unoccupied. As I have said, I was there from Autumn 2011 through until Winter 2013, and again in Summer 2014. My Dad was there the rest of the time*". In line with Mr Miller's hierarchy of evidence I am only able to attribute limited weight to this passage and the email more generally. Moreover I again find a degree of ambiguity: saying "*I was there*" is not unambiguously saying "*I lived in the building*". It would not be appropriate to attach greater weight to this passage as a potentially crucial piece of evidence, given the ambiguity and lack of precision in its drafting, and the form in which it was submitted.

13. The other key area that I deal with at the outset is the dates of photographs. As I indicated in my agenda and at the Inquiry in my experience evidence can be obtained from the companies that take aerial photographs to confirm precisely when they were taken. This can be in the form of a certificate of authenticity or sometimes in a simple schedule or letter. The corollary is that the dates given on Google Earth images cannot be relied on to be accurate.

14. In my view the point is plainly made by looking at the first 2 aerial photographs annotated "*Imagery Date: 1/1/2001*" and "*Imagery Date: 1/1/2005*", which are the copyright of Infoterra Ltd & Bluesky, and Getmapping plc, respectively. The extent of leaf cover in the mainly deciduous trees in the vicinity of the site, evident in both images, is inconsistent with them having been taken in the middle of winter. The professional witnesses for both main parties agreed that the same 2005 aerial photograph is that which is labelled "*2006*" at Appendix D to Mr Noon's proof of evidence. That version of the image contains the date "*6/30/2006*" in the top left corner, which appears to be the American version of 30 June 2006. That might be said to be consistent with the extent of leaf cover. However it would only be appropriate to attach very limited weight to that date because it appears to be a consequence of the online tool for selecting images by date. Mr Miller's version of that same image contains a different date "*12/31/2005*". For these reasons, and with particular reference to what the Appellant put forward as the Google Earth image from 2005[8], I attach very limited weight to all of the dates given on all of the aerial photographs.

15. In that context I turn briefly to the other photographs of the Land, i.e. not the aerial photographs but the ground level photos submitted by various parties. I am satisfied, on the balance of probability, that the 2 photographs that have been provided by Mr Paisley and are referred to in his proof of evidence were taken on 25 December 2011 at 12:33 and 12:34 hours respectively. I sought and obtained electronic versions of those photographs and was able to verify for myself the properties of those images. I did the same exercise for the 2 photographs that have been provided by Ms Durnan and are referred to in her evidence, including the statutory declaration. It appears to be self-evident the times of those photographs, after 2100 hours, cannot be right given that

[8] See, amongst other things, paragraph 7.6 of Mr Miller's proof of evidence.

sharp shadows from full sunlight are evident in the images, but in my view that does not invalidate their dates and I accept they were taken on 3 June 2011.

16. It follows from my acceptance of the dates of Mr Paisley's photographs, that the dates of the photographs taken by Miss Simpson, "*19/10/2012*", cannot be correct. She acknowledges that the meal was held on Christmas Day and so it would appear that the date/time function on her camera is significantly out or perhaps has never been set up properly. However this also undermines one aspect of her evidence, namely the entries in her diaries in 2011 and 2012. In the former it says "*To Leics*" on 23/12/11 and "*Back to Somerset*" on 26/12/11 which, Miss Simpson said, indicated to her she must have visited her parents for Christmas 2011. In the latter the entry for 25/12/2012 was "*fields*", which suggested to her that the Christmas meal at the Land was in 2012. Miss Simpson agreed in cross-examination that these diary entries are wrong and I am satisfied that they are. I consider any implications in due course but I am satisfied she made no similar claim, as to the date of the Christmas meal, in her statutory declarations and she did readily concede the entries were wrong.

17. I deal next with the photographs submitted by the Council of The Trading Post [Document 7]. Ms Durnan confirmed the contents of her proof of evidence to be the truth and I note paragraph 2.6 thereof says a caravan was moved from The Trading Post to the Land. It appears to be common ground that this is what I shall call the original caravan, shown in Photograph F attached to the enforcement notice. The Council's photographs show that caravan was at The Trading Post on 17 October 2006 but removed by 30 April 2008. There is clear evidence of the first, important, date and no issue was taken with the second. I am satisfied, on the balance of probability, that this demonstrates that the original caravan was brought onto the Land between these respective dates[9].

18. In my view these photographs corroborate the oral evidence, which had at that stage already been given by Miss Simpson to the Inquiry. Her diary entry says that the caravan was first brought on to the Land on 26 March 2007 and applying the balance of probability I accept that date[10]. The Council's first photograph demonstrates that Ms Durnan's claim, at paragraph 2.6 of her proof, that the caravan was brought onto the Land at some point during 2005, to be wrong. Ms Durnan said in chief that the first time she went onto the Land was 2006 and also said in cross-examination that during the period up to 2009 she only visited the Land by invitation. It follows that Miss Simpson's recollection as to what took place during this period must be preferred.

19. Of even greater significance, this finding contradicts the Appellant's claim to have resided on the Land: "*from at least 2005*". The Appellant's statutory declaration says, in clear terms: "*Initially I lived in a railway carriage…*" but for the first time, when giving evidence in chief, the Appellant said this was wrong and that Miss Simpson lived in the caravan sometimes and he did sometimes. If that version of events is now correct then it follows that the Appellant did not start to live on the Land until after 26 March 2007.

Both appeals: *What has taken place as a matter of fact?*

20. Under the ground (b) appeal the onus of proof falls on the Appellant to show on the balance of probability that the "*breach of control alleged in the enforcement*

[9] I acknowledge that Mr Denning did not dispute the assertion that he helped the Appellant to lift the caravan out of the ditch in 2005. However this new evidence came to light after Mr Denning gave evidence and so I attach very little weight to Mr Denning's confirmation of this date during cross-examination because his agreement merely reflects the agreed position between the main parties at that stage.
[10] This date is also given on page 3 of her first statutory declaration.

notice has not occurred as a matter of fact" [as per section E. (b) of the appeal form]. This question of fact equally arises in Appeal B because that appeal is predicated on there being a single dwelling house in existence on the Land. In this case, somewhat counter-intuitively, I am going to deal with this aspect of Appeal B first in an attempt to establish what building works were done when.

Appeal B: *When was the building substantially completed?*

21. The material date for this purpose is 4-years prior to the date of the LDC application, namely 15 October 2011. It is material to observe that the Council has not found it to be expedient to take enforcement action in respect of the building. The notice, subject of Appeal A, merely relates to the use of the building and does not require its demolition. Moreover the Council's position is expressly recorded in the first bullet in paragraph 5.1 "*Areas of Agreement*" in the Statement of Common Ground [Document 6]. It says: "*The building itself is lawful. It is agreed that the building has been erected and substantially complete for more than 4 years prior to all the relevant dates and on that basis a LDC can be issued for the building itself plus the compost toilet*".

22. Throughout the Inquiry I expressly reserved my position in the matter and, ahead of closing, read the salient passage from what is arguably the leading case in this area, namely *Sage v SSETR & Maidstone BC* [2003] UKHL 22. Paragraph 23 of the judgment says: "*When an application for planning consent is made for permission for a single operation, it is made in respect of the whole of the building operation…if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the whole operation is unlawful*"[11]. This is contrasted with a case where the building has been completed, but is then altered or improved. Paragraph 24 continues: "*The same holistic approach is implicit in the decisions on what an enforcement notice relating to a single operation may require*". As I have noted there is no enforcement notice in respect of the building, but the approach is applicable.

23. The first thing to say is that I expressly disagree with the Statement of Common Ground insofar as it refers to the compost toilet for 2 reasons. The first is that it is a physically separate structure from the building operation that was applied for in the LDC. The Appellant's statutory declaration says: "*I have attached a sketch showing the layout of the building*", and that layout plan does not show the compost toilet. In opening I specifically took issue with the manner in which what was then a draft Statement of Common Ground made reference to the compost toilet and said that the Appellant needed to deal with it in chief. My note of his evidence is that he said the compost toilet was built in Spring 2014 and so that is the second reason why I cannot issue an LDC for the compost toilet. It would appear to be vulnerable to enforcement action because 4-years have not elapsed from the date upon which it was erected.

24. The position in relation to the building is slightly more nuanced. Rohan Black's statutory declaration says that the works were complete by September 2011 but says: "*I later added insulation and a clay oven*". I am satisfied that there was a gas cooker in the building by December 2011 and so the addition of a clay oven can be considered to be an alteration, if indeed such works involve a building operation. For these reasons I can discount the relevance of the oven. However, in the context of *Sage*, the insulation is of relevance. The building is relatively insubstantial, with simple timber frame and external wood cladding,

[11] All quotes taken from [2003] J.P.L. 1306.

and so the insulation is significant to the fabric of the building as well as its thermal properties. The position in respect of the insulation is ambiguous.

25. I accept, on the balance of probability, that there is evidence that it was fitted to parts of the building, such as the area in which the Christmas celebrations took place in 2011. The insulation was evident in Miss Simpson's photographs of that event, which I viewed at the Inquiry, and Mr Paisley remembers the building to be warm on that occasion. However paragraph 2.8 of his proof of evidence says: "*Subsequent to our visit…I can recall Rohan putting reclaimed polystyrene slab insulation into the building*". That suggests it was done after the material date. At the Inquiry he said it was done soon after the Christmas meal or that it could have been done before, but that it was done within a year of the Christmas meal. That might suggest that the building was not substantially completed until late 2012, significantly after the material date.

26. The Appellant's statutory declaration says: "*During the ensuing winter we insulated the building*…", which in its context must be read to be 2011/2012. In chief the Appellant addressed the insulation and said that cellotex sheets were used on the ceiling and walls. He said: "*ply or match boarding*" had been installed over the top of the insulation and this reinforces my view that the insulation cannot be said to be inconsequential to the overall building project. The Appellant said Rohan did most of the work after September 2011 but the Appellant said he "*can't help*" and was "*not clear about*" when it was done. In view of the onus of proof on the Appellant to establish matters of fact this does not show that the building was substantially completed by the material date.

27. I asked the Appellant about Mr Paisley's photographs[12] which, amongst other things, show a step ladder, a pile of wood and what the Appellant said was a door lying horizontally against the outside of the building. He did not dispute my suggestion that the photographs were indicative of works in progress. He said that the door ended up being used on another side of the building. With regard to the wood cladding he admitted that there may not have been 100 % cladding over the frame of the building at the time that the photographs were taken. He admitted that the pile of wood outside of the photographs might have been left overs. Since Mr Paisley's photographs are a record of the condition of the Land and building after the material date this again suggests that the building was not substantially completed prior to the material date.

28. Lucy Durnan's evidence supports such a finding. Paragraph 2.22 says: "*After the shed was erected Rohan spent a lot of time working on it with Chris and making it watertight and cosy. I remember this being after the Glastonbury festival 2011 during the Autumn*…". I asked her about this passage and she stated that the major building works had happened prior to the material date. There is no reason to doubt the superstructure of the building had been erected prior to the material date but, having regard to *Sage*, that is not enough.

29. Not only is the Appellant's case neither precise nor unambiguous to show when the building was substantially completed, but I consider that there is evidence before the Inquiry to cast doubt on the Appellant's claims in this respect. Miss Simpson said that the Christmas lunch was convened in what is labelled as the bedroom on the original layout plan[13], which was what she called the "*insulated*

[12] As noted previously these are agreed to date from 25 December 2011, which is after the material date.
[13] There is a tension between her evidence to this effect and that of Mr Paisley, who says the meal was taken in the front part of the building which faced onto the field. However paragraph 2.25 of Ms Durnan's proof says the meal was cooked in another part of the shed and: "…*brought into Rohan's room where there was a wood burner*", which appears to support Miss Simpson's recollection. This simple example underlines the fallacy of the Appellant's

bit". Her evidence was that Rohan fitted most of the insulation in the Autumn of 2012 after he had been travelling and to support that she referred to her diary entries from 10 and 22 September, and 9 October, 2012, which recorded: "*Ro to France*", "*Ro back again*" and "*Ro back in GB*", respectively. I find this version of events not to be inconsistent with Mr Paisley's oral testimony.

30. Moreover Miss Simpson's evidence in chief, which was led by me because the Council did not call her as a witness, was that the middle kitchen, including the area next to the clay oven was "*open for ages*", which she indicated might have been as late as 2015[14]. She stated that there was no external face on this part of the structure, i.e. what is now the eastern perimeter wall, until 2015[15]. This version of events is not wholly inconsistent with the Appellant's concession that there might not have been external cladding around the whole of the building, albeit he did not give a date past Christmas 2011. I note, among other things, that the Appellant said in chief that the clay oven was removed and a partition wall was moved about 2 years ago. In the light of Miss Simpson's evidence there might actually be a correlation. It has not been demonstrated that the works to this part of the building, which are admitted to have taken place in 2015, comprised an alteration or improvement to an existing building rather than a continuation of a building operation prior to its substantial completion.

31. The Appellant said in chief that the workshop/store on the north side of the building was recent, which he quantified to be 2½ years ago. This is consistent with Miss Simpson's "*doc 1 floor plan*", which records that the workshop/store was constructed in 2014. It is significant, given that the base plan is that produced by the Appellant and referred to in his statutory declaration, that the "*lean to store*" [added to the plan at Document 4] was not on the Appellant's original plan. This might suggest it has been added at an even later date and I find the Appellant's explanation that it had been forgotten to be unconvincing. In view of the Appellant's concession with regard to the workshop/store this gives me a sound basis to find that the building shown on the layout plan, submitted with Appeal B, was not substantially completed by the material date.

32. As I indicated at the Inquiry I do not lightly disagree with a consensus between the main parties, but the Guidance requires me to ensure that the onus of proof is discharged in matters of fact. For the reasons I have given not only is the Appellant's evidence ambiguous and imprecise, there is evidence to contradict his version of events. I attach this aspect of Miss Simpson's evidence substantial weight because it is not inconsistent with certain aspects of the Appellant's version of events. Taking account of all of the evidence before me I therefore decline to confirm that the building is lawful for planning purposes.

Both appeals: *What has the Land been used for apart from residential?*

33. For reasons I have given [31] it appears to be common ground that the workshop/store was constructed in 2014 and so prior to this date it would appear that a part of the remainder of the building was used to store tools and machinery used on the land. Miss Simpson's first statutory declaration says: "*I have used this building from 2010-2015…as an agricultural store, a tool store and a shelter when working on the land*". The Appellant's statutory declaration admits that in 2011 it was: "*…used for storing my tools and*

opening submission that there is little disagreement as to fact in this case. To the contrary, the key to considering the requisite time periods is trying to establish what did take place as a matter of fact.

[14] This is entirely consistent with her first statutory declaration and, in particular, the annotation on what she refers to as "doc 1 floor plan".

[15] This is consistent with "photo No 7", which she dates "04/06/15", appended to her first statutory declaration.

equipment which are used on the holding and also in connection with forestry work…".

34. At no stage, when giving evidence, did the Appellant say that the use of the building for storing tools etc had ceased and this impression is corroborated by Rowan's email[16]. However the Appellant did say such storage had sometimes taken place in the "*lean-to porch*". Miss Simpson also said that she had used that area as a workspace, although she said under cross-examination that she had used the former lounge for that purpose too. The storage use in "*Sarah's Space*"[17] is admitted to have been relatively recent, but started by June 2016[18]. That area is locked and appears to be exclusively what it says on the sign. That storage use appears to have been subsisting on the date the notice was issued and is unrelated to any residential use to which the rest of the Land is put.

35. The Appellant's statutory declaration says: "*During this time, I have planted trees, mowed the grass and gardened the areas shown on the attached plan*", which is the LDC red line area and not the whole of the Land. This statement is ambiguous as to the period being referred to, but I shall assume this should be read by reference to the end of the previous sentence, i.e. from September 2011. However Miss Simpson says that she has used the whole of the Land from 2001 for: "…*agricultural, horticultural and conservation*". She provides detailed invoices from 2005/2006 for trees and other plants she has bought as well as a schedule of dates as to when things were done on the Land.

36. In my view Miss Simpson's evidence as to this use should be preferred because it is far more precise. Amongst other things paragraphs 2.3-2.5 of Ms Durnan's proof of evidence supports Miss Simpson's evidence that the tree planting took place at an early stage. Ms Durnan makes no reference to tree planting after September 2011 and Miss Simpson's schedule cites the last explicit entry for tree planting to be 16 April 2011. The Appellant has provided no evidence to show that any trees have been planted on the Land after September 2011.

37. In terms of mowing the grass, the main evidence of such activity is in the aerial photograph that Google says has an image date of "*8/10/2007*", which shows a relatively small area in the north-west corner to be mown. Ms Durnan does not refer to mowing in her proof of evidence but says: "*Sarah used to get the hay cut annually*"[19]. Miss Simpson said that there were only one or 2 years in which a crop has not been taken from the Land and she said this was because there was no space to store it and as a result it had gone rotten under plastic. It is possible these incidents occurred after February 2014 when Ms Durnan admits she does not know what happened in detail on the Land. In contrast the Appellant indicated in answer to my question that a hay crop was only taken twice and one of those is evident in the aerial photograph that Google says has an image date of "*8/15/2016*". In the circumstances, applying the balance of probability, Miss Simpson's version of events is to be preferred. The evidence points to a crop of hay being regularly taken from the Land, which appears to be an agricultural activity, rather than mowing the Land.

38. Miss Simpson gives precise evidence about the polytunnel being installed on 24 August 2012 and she says planting started then. The year in which the

[16] The email dated 1 December 2015 says: "…*I can assure you that our shed has always been used for storing tools, scythe's and lawnmowers which are used on the land*" [sic].
[17] As per sign on door of former 'Lounge' [on layout plan] at the time of my site inspection.
[18] Miss Simpson referred to an entry in her diary for "Bridget field" on 6 May 2016, which Miss Simpson said was when she had started to clear her attic and move things into the building in anticipation of selling her home.
[19] Source of quote: paragraph 2.21 of Ms Durnan's proof of evidence.

polytunnel was erected is corroborated by paragraph 2.19 of Ms Durnan's proof of evidence. Ms Durnan confirms Miss Simpson then grew salad leaves in the polytunnel. There also appears to be commonality between Ms Durnan and Miss Simpson in respect of the use of the no-dig method of cultivating plants, although Ms Durnan dates it as 2011 and Miss Simpson says it was February 2012. Apart from growing pumpkins, which were harvested in Autumn 2011[20], I find no evidence of the Appellant being involved in the growing of vegetables on the Land. It is Miss Simpson that exhibits photographs of the polytunnel and produce. In the circumstances I find no evidence to support Mr Miller's contention that the polytunnel was used in association with the dwelling or the Appellant's claim that he has "*gardened*" the Land since September 2011.

39. For the above reasons I am satisfied that the Land has, at all material times, been used for agriculture as defined in section 336(1) of the Act. Nothing that I saw during my inspection would suggest that the agricultural use has ceased and, amongst other things, what Miss Simpson called the orchard strip, along the northern side of the Land, contains a number of fruit trees as well as trees like a walnut. The Appellant has not shown that the agricultural use has been confined to that part of the field outside the LDC red line plan, which is labelled "*Retained as rough pasture*" on that drawing. To the contrary the red line area on that plan appears to be completely arbitrary and to have no basis in fact.

40. Instead the agricultural use appears to be mixed in with the residential use. Amongst other things the access and parking area serves both uses: Miss Simpson said that when she goes to the Land she parks her van across the entrance and checks things over. She is a joint owner and the Land has not been subdivided[21]. Not only has the building been continuously used for the keeping of tools, equipment and/or machinery that is used on the Land, but other components of the agricultural use are mixed in with the residential use. To give a simple example, my site inspection revealed that the polytunnel is sited between the building and the area in which the Vickers Caravan[22] and the Sprite Tourer are sited which, in turn, is next to the car park. The agricultural use is significant and material. It cannot be discounted as being de minimis.

41. The leading case of *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 sets out 3 criteria for assessing the correct planning unit: (a) Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered; (b) Even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered; and (c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered a separate planning unit.

42. Based on this analysis it would appear that the Land falls within the second example, (b), such that it remains a single planning unit. The agriculture and any storage use that existed on the date of issue of the notice is not incidental or ancillary to the residential use given that it appears to be primarily undertaken by a joint landowner who for much of the time at issue, including since September 2011, has not resided on the Land. The agricultural use does

[20] As described in paragraph 2.18 of Ms Durnan's proof of evidence.
[21] See paragraph 2.3 of Ms Durnan's proof of evidence.
[22] Which the Inquiry was told is occupied by Laura.

not take place in a physically separate area of the Land and so this aspect of the Council's allegation in the notice appears to be made out.

Both appeals: *Was there a single dwelling house on the Land on or before the material date [21]?*

43. The date of 1 September 2011 is noted in answer to question 10 of the LDC application form, now the subject of Appeal B, and so there is no dispute that prior to this date there was no single dwelling house on the Land. The inference from the application is that a single dwelling house did exist from this date.

44. In my agenda I noted that the LDC application, the subject of Appeal B, was accompanied by a building layout plan, but that the plan failed to identify a bathroom or toilet within the fabric of the building. This led me to question whether the building constituted a single dwelling house by reference to the case of *Gravesham BC v SSE & O'Brien* [1983] JPL 307. It held that the distinctive characteristic of a dwelling house is its ability to afford to those who use it the facilities required for day to day private domestic existence.

45. At the Inquiry the Appellant sought to address that concern by producing a revised layout plan [Document 4] which identified, for the first time, the position of what is labelled as a "*compost toilet*" and "*shower*" to the east of the building. I saw both structures during the course of my site inspection, as well as the old compost toilet, which is sited roughly in the north-west corner of the Land, i.e. the opposite side of the Land from the alleged dwelling house, in amongst the brambles/hedgerow. The Appellant's evidence in chief was that the new compost toilet, to the east of the building, was erected in Spring 2014 [23] and he said that the shower was erected sometime during 2012.

46. Mr Noon, for the Council, said the new compost toilet and shower would fall within the curtilage of the building, but he said that the compost toilet in the north-west corner would not be within its curtilage. At a distance of perhaps 80 m I cannot accept that the old compost toilet would have been within the curtilage of the building that has been erected. Given my finding that the Land is in a mixed use I see no need to review in detail the legal authorities to which I have been referred with regard to curtilage[23]. The Land, as defined, has not served the purpose of the building: "*in some necessary or reasonably useful way*"[24]. To the contrary I have given reasons why the Land has, at all material times, continued to function as part of an agricultural use[25]. The Council has also drawn attention to the notion of smallness[26], which is not met here.

47. Moreover it must follow that any residents on the Land would not have been dependent on bathroom facilities in the main building because at all material times, at least prior to the erection of the new compost toilet in Spring 2014, there was no bathroom. Technically there still are no such facilities within the fabric of the building itself. This factor weighs against the Appellant's claim.

48. For completeness I asked the Appellant what he did for bathing prior to the shower and he said he would use a bath or trough. He described bathing as an

[23] See, amongst others, Documents 3.1-3.6. It is not immaterial that the fourth bullet-point in paragraph 5.1 of the Statement of Common Ground [Document 6] appears to suggest that if it was an agricultural building it would have no curtilage. Whilst that does not necessarily follow it does support a finding that any curtilage is not going to extend to the far side of the Land but is likely to be a small area that is intimately associated with the building.
[24] As per *Sinclair Lockhart's Trustees v Central Land Board* [1950] 1 P & CR 195, which is the Appellant's preferred test arising from the case law but is only one of multiple tests that it is appropriate to consider.
[25] One of 3 criteria for determining whether land is within the curtilage of a building identified in *Sutcliffe Rouse and Hughes v Calderdale BC* [1983] JPL 310 [Document 3.1].
[26] *Dyer v Dorset County Council* [1989] QB 346 [Document 3.2].

"*outdoor activity*". Ms Durnan said, perhaps understandably, that she would bathe at her home. It is ambiguous what Rohan did for bathing because neither his statutory declaration nor his email of 1 December 2015 addresses this issue. Whilst not conclusive this too weighs against the Appellant's claim.

49. For the above reasons the Appellant has not demonstrated there was a single dwelling house in existence on the Land on or before the material date.

Both appeals: *What was the use of the building between September 2011-Autumn 2012?*

50. The Appellant's statutory declaration says the works to the building were completed in September 2011: "*and Rohan moved in*". For reasons given [32] I consider it has not been shown that the building was substantially completed by this date, but it remains plausible that Rohan nevertheless occupied the building from this date. As I have noted, even on Rohan's version of events, as stated in his statutory declaration, the insulation was added at a later stage.

51. For completeness I address here the inference from Ms Durnan's statutory declaration that the building was in residential use by June 2011[27]. Ms Durnan accepted in answer to my question that she was unsure about this date and that there was an element of doubt about her reference to this date. The fact is that nobody else has suggested that the building was being lived in as early as June 2011 and the photographs themselves are inconclusive. Miss Simpson has even speculated as to whether they are of the building at issue on the Land. I consider, on the balance of probability, that one photograph is taken in the vicinity of the lean to/porch area because one can see a building and what appears to be a vehicle in the background. However there appears to be no roof on that part of the building, so it was not substantially completed[28]. Crucially it does not support any inference that a residential use had started.

52. I cannot be satisfied on the evidence before me that Rohan permanently lived in the building from September 2011. Sarah Simpson's oral evidence to the Inquiry was that Rohan had a musician's lifestyle and that whilst he relaxed in the building he did not sleep there until it was fully insulated in the Autumn of 2012. She said Rohan ate and slept in the VW camper but also stayed locally. Ms Durnan says Rohan fell out with Miss Simpson in 2011 and that he stayed regularly at the field, in "*his van*" and at Ms Durnan's property[29]. The Appellant also still owned Nimmer Mill until October 2013. Rohan appears to have had a number of alternative accommodation options available to him and it has not been unambiguously shown that he resided continuously in the building.

53. Miss Simpson's evidence that the building was used as a band rehearsal place during 2011 and 2012 is consistent with paragraph 2.23 of Ms Durnan's proof, which recounts a neighbour's complaint about drums being played too loudly[30]. Ms Durnan's evidence that Rohan '*entertained*' his new girlfriend in the building in early 2012 might suggest that there was a bed in the building, but does not unambiguously show that Rohan lived in the building continuously at that time.

54. The Appellant said that there was a gas cooker, in what is marked as a lounge on the layout plan, which he said Rohan used all the time. He might have used

[27] This appears to be the inference from that part of her statutory declaration that refers to the photographs of the rugs, which I have agreed date from June 2011.
[28] The Appellant said in chief that the "*southern third* [of the building was] *roofed later*" and this appears to be evidence of the same.
[29] Paragraph 2.21 of her proof says during 2011 and this term is imprecise.
[30] Consistent with Mr Dobson's reference to: "*…a noise complaint*", on page 2 of his statutory declaration.

it for cooking but Miss Simpson's evidence is that he ate in the camper and that contradicts the Appellant's version of events. It appears to be common ground that at all material times there were a number of cookers in other vessels such as caravans on the Land, with the exception of the small railway carriage. The Appellant otherwise told the Inquiry under cross-examination that residents used the big kitchen in the building. It appears to have been a shared facility. This would appear to inform the third component of the allegation in the notice.

55. I acknowledge that Miss Simpson accepted that she was wrong about the year in which the Christmas meal took place [16] and I have considered whether the evidence from the other witnesses outweighs her recollections for this period. Amongst other things Mr Paisley's statutory declaration says: "*Rohan occupied and lived in the building at that time*". However Ms Durnan's evidence is clear that: "*Rohan and his mother cooked a potato soup and a flan with veg that she had grown on the field*". If Miss Simpson and her son Rohan jointly cooked the meal in the building and then hosted the meal in what is labelled the bedroom on the layout plan, I find it more likely than not that she would have known what his living arrangements were at that time. In these circumstances I find it impossible to discount her personal testimony on this point. Ms Durnan says: "*It was a jolly occasion*"[31]. Any "*falling out*"[32] between mother and son appears to have been put behind them by Christmas 2011. Even if Rohan might have slept in the building on some occasions it has not been shown that any residential use was continuous from September 2011 to Autumn 2012.

Both appeals: *What was the use of the building between November 2013 and September 2014?*

56. In the period between Autumn 2012 and November 2013 Miss Simpson does not appear to dispute that Rohan did sleep in the building, but it is common ground that he moved to a flat in Glastonbury in November 2013. In chief, Miss Simpson asserted that the Appellant only slept in the building in 2016 and so it follows that she disputes that he slept there in the period up to April 2014.

57. The Appellant said in chief that there were no long periods when the building was empty, but he admitted that there were periods when he was working on "*converting*"[33] it when he stayed in the small railway carriage. He points to the aerial photograph that Google says has an image date of "*3/14/2013*", as evidence that the small railway carriage was sited next to the building and he says that he slept in the small railway carriage, as necessary. During cross examination the Appellant was uncertain as to whether the aerial photograph that Google says has an image date of "*6/17/2014*" showed the small railway carriage next to the large railway carriage or next to the building. He said that the gypsy style touring caravan was brought onto the Land "*circa 2013*" and there has been no suggestion that it has been parked elsewhere on the Land.

58. If that date is right then I am unclear how the Appellant is certain that the earlier image, dated "*3/14/2013*", shows the small railway carriage rather than the gypsy style touring caravan next to the building. There appears to be nothing else to the south of the building that might be the gypsy style touring caravan. I have already given reasons why the dates of these images cannot be relied on [14] and I am far from satisfied that the Appellant can distinguish what the objects are to the south of the shed in either of these images with

[31] Source of both this and the earlier quote: paragraph 2.25 of Ms Durnan's proof of evidence.
[32] Source of quote: paragraph 2.21 of Ms Durnan's proof of evidence.
[33] The word the Appellant used in chief according to my contemporaneous note.

any certainty. It is material that the Appellant said the large white object in the aerial photograph that Google says has an image date of "*1/1/2005*" was a caravan. However, on the balance of probability, it cannot be the caravan [17] but is more likely to be the VW camper van[34]. If the Appellant is wrong about the caravan his evidence with regard to other items on the aerial photographs must be treated with caution because it appears to involve some speculation.

59. In closing the Appellant criticised Miss Simpson for exaggerating and there might be some truth in that. However the Appellant appears to be guilty of making statements that he does not know to be true. I do not suggest he has lied but his position has been proved to be wrong on a number of counts. Amongst other things he changed his position[35] and said he lived first in the caravan, which has been shown was not on the Land in 2005 [17]. He initially said the railway carriage was not brought onto the Land in 2005[36] but said it must have been 2006. There must be a suspicion that he changed his position in this matter because it was self-evident that the carriage was not evident in the aerial photograph that Google says has an image date of "*1/1/2005*".

60. Under cross-examination, when looking at the aerial photograph that Google says has an image date of "*8/10/2007*", he agreed that the railway carriage was not evident. This might suggest the carriage was not brought onto the Land until 2008 or 2009, which is at least 3-years after the date given in his statutory declaration. In short his evidence appears to be a movable feast. It does not inspire confidence that the Appellant knows what happened when. During cross-examination it was asserted that the Appellant had *patchy recall* and I find it hard to disagree. The Appellant was not a convincing witness.

61. The Council suggested in cross-examination that the Appellant's statutory declaration does not unambiguously state who was living in the building from November 2013. The Appellant's testimony does not satisfactorily resolve this potential omission because he cannot say with any precision when he lived in the building and when he slept in the small railway carriage. I cannot even be sure when the small railway carriage was brought across the field. As Mr Noon noted during cross-examination there is a well-used path or route across the field from the vicinity of the large railway carriage in the aerial photograph that Google says has an image date of "*3/14/2013*"[37]. Someone was clearly going back and forth regularly and if the object to the south of the building in that image is the gypsy style touring caravan, and I cannot be sure that it is not, this might suggest the Appellant was living in the vicinity of the large railway carriage. The evidential matrix is far too vague to draw out clear conclusions.

62. Miss Simpson told the Inquiry that Rohan did not live in the building from April to September 2014 and I have already given reasons why I am only able to attach this aspect of Rohan's evidence limited weight [12]. Miss Simpson said that Rohan's girlfriend, Emily, could not bear to live in the building because of the presence of rats[38] and so the couple lived in the large railway carriage. Miss Simpson said there was nobody living in the building during this period and it would appear that the Appellant makes no claim for this period because he

[34] As per Miss Simpson's oral testimony to the Inquiry, which I accept because the caravan arrived much later.
[35] From that in his statutory declaration, which says he originally lived in a railway carriage: "*from at least 2005*".
[36] Which is the date given in his statutory declaration.
[37] In common with the other aerial photographs this date has not been proven and in the absence of a certificate of authenticity or similar the image could be any time in 2013, or possibly even another year.
[38] Page 3 of Miss Simpson's first statutory declaration says an EHO visited in 2014, partly because of rats.

says Rohan was living there. There is also a reference to a "*rat infestation*"[39], which might be said to corroborate Miss Simpson's claim to a limited extent.

63. Miss Simpson was cross-examined about this point with reference to the email dated 5 December 2015 from Tonga Schneider. In that email Tonga says she lived in what she calls the train wagon, but which appears to be the large railway carriage, for 4 months in 2014. The clear inference from that line of questions was that if Tonga was living in the railway carriage Rohan could not have been living there. However Miss Simpson referred to her diaries and said that Tonga had arrived on 23 July 2013, that Tonga had visited Stourhead on 3 August 2013 and had gone home on 26 September 2013. In short Tonga's claim that she stayed in 2014 was, on the balance of probability, shown to be wrong and this appeared to be conceded by the Appellant. Amongst other things paragraphs 2.27 and 2.28 of Ms Durnan's proof of evidence confirms that Tonga came in July 2013. Thus the cross-examination served to confirm the veracity of Miss Simpson's claim because she was able to effectively rebut it by reference to precise evidence in her diary; I attach it substantial weight.

64. In these circumstances the evidence of Miss Simpson for the period between April and September 2014 is to be preferred because it was tested by cross examination and found to be all the stronger as a result of that process. I did offer the Appellant the chance to be recalled to deal with any new evidence that might have arisen from Miss Simpson's testimony but the opportunity was not taken. Amongst other things Ms Durnan does not offer any evidence for this period[40] and Mr Paisley's evidence is essentially restricted to 2011[41]. Mr Miller agreed in cross-examination that he has no first-hand experience of the use of the Land that could assist the Inquiry.

65. This illustrates a wider point that Miss Simpson's testimony is generally to be preferred in my view because she has produced evidence, whether in the form of her diaries, photographs or invoices, to support the claims she has made. With the exception of the Christmas meal [16] I found her, in comparison to the Appellant, to be the more convincing witness despite the fact that she is a third party in these proceedings and has had little professional input, which has resulted in her statutory declarations being rather unfocussed[42]. However at its core her evidence is less ambiguous and more precise than that of the Appellant who chose not to elaborate on a statutory declaration that is set down on a single side of A4, from which he has nevertheless departed [19].

66. For these reasons, on the balance of probability, I conclude that nobody was residing or otherwise sleeping in the building during this period. In my view a gap of 5 months is significant and material in the planning context such that even if I might be wrong about the earlier period, from November 2013 to April 2014, the Appellant has not shown that any residential use of the building was continuous. Applying the test from *Swale Borough Council v First Secretary of State and another* [2005] EWCA Civ 1568 [Document 3.7] the Council could not have taken enforcement action against the use of the building as a single dwelling house during that 5 month period because it was not so used. To the extent that there may have been a breach of planning control during the period

[39] Source of quote: submission from Mr Denning to The Planning Inspectorate dated 23 August 2016.
[40] For reasons set out in paragraph 2.30 of her proof of evidence.
[41] When giving evidence at the Inquiry he did not significantly elaborate on paragraph 2.9 of his proof of evidence.
[42] I mean no disrespect in saying this, but if there had been legal input to the drafting of her statutory declarations then they might have been more focussed and not covered things like the access and splays, which relates more to the planning merits of the development undertaken and is not at issue in these appeals.

from April to September 2014[43], on the balance of probability it would have been part of the mixed use of the Land. This would have been subject to a 10-year period and the Council has taken such enforcement action [Appeal A].

67. In reaching this conclusion I appreciate that, on the balance of probability, the Appellant was sleeping in the small railway carriage next to the building in April 2014. In contrast to the Appellant's imprecise evidence as to when the small railway carriage was moved across, Miss Simpson has attached a photograph to her email dated 11 December 2015, which she says was taken on 7 May 2014[44], which shows the small railway carriage next to the building. Despite its close proximity to the building I consider that the manner in which the Appellant used it was no different to the way in which other persons who lived on the Land slept in other caravans and the large railway carriage but also utilised the building, whether for eating, communal meals or otherwise. It does not alter my view that the building was not in use as a single dwelling.

68. The Appellant was also asked about "*Photo No 4*"[45] and said it was a view from the lounge to the bedroom and that the bed was in the far corner; he apologised for the state of his housekeeping. Miss Simpson says this shows the area in an uninhabitable state. The first point is that if the date is correct then this appears to be outside the period that the Appellant claimed to live in the building. Rohan's statutory declaration talks about being on the Land from April until September 2014 and so it is ambiguous exactly when he moved to the flat. Even if it might be said this is a photograph of when the Appellant moved back into the rear bedroom, and in chief he made no explicit claim to this effect, I can understand why Miss Simpson says it shows an uninhabitable space. She called it a "*dump store*"[46], but the photograph is inconclusive.

69. In the context of my earlier finding I do not need to focus greatly on the use of the building for hosting World Wide Opportunities on Organic Farms [Wwoof]. It is common ground that such use took place over the summer of 2014. Miss Simpson's first statutory declaration says: "*A field kitchen was made (doc 1 lounge), here we processed produce from the field*", and in cross-examination she said she set up the kitchen in w/c 7 August 2014. It follows that there were 2 kitchens in the building during at least part of this period: one used by the Wwoofers and one by the Appellant and various guests. Although the absolute numbers of Wwoofers appears to have been relatively small[47] it has not been shown that this use was not material. The Council has submitted it was not ancillary to any residential use being made of the building but might have been ancillary to the subsisting agricultural use of the Land; I agree.

Both appeals: *What was the use of the building from September 2014?*

70. In the period from September 2014 it appears to be common ground that Rohan permanently vacated the Land, initially to a flat and then his present address. So for this period, for reasons set out above [64], what I essentially have is conflicting testimony from 2 individuals. Miss Simpson says that she

[43] To be clear I am referring here to the communal use of the kitchen by persons residing in vessels on the Land.
[44] I acknowledge that this date has not been verified but there is no reason to think that the Appellant would dispute that date because that is my understanding of his case at, or around, this period of time. The email was sent to the Council as part of the LDC and was submitted as part of the bundle on the morning of the Inquiry.
[45] Appended to Miss Simpson's first statutory declaration and said to date from 21 September 2014, although again there is nothing before me to verify its date.
[46] My contemporaneous note of her evidence in chief.
[47] See "Doc 2 b" attached to Miss Simpson's first statutory declaration; the Appellant said in chief that there were only "4 or 5 Wwoofers".

visited the property 3 or 4 times a week during this period when the Appellant was not there and would go in the building typically once a week[48]. Conversely the Appellant's position is as set out [57] and he said there were no big gaps.

71. The other information for this period is found in Mr Noon's appendices. The Appellant was asked in cross-examination about the log on page 50 and appeared to say that he was sleeping in the building and the small railway carriage at the end of September 2014, but it cannot have been both. At best it was sleeping between them depending on the extent of disruption/works to the building. To further confuse the matter Mr Noon's note of Miss Simpson's telephone call at that time records: "*Chris Black doing up the railway carriage with a view to moving in*". The evidential position is extremely unclear and the Appellant's evidence as to what took place is neither precise nor unambiguous.

72. The Appellant was asked about Mr Noon's log entry following a site visit[49] on 14 January 2015, which records: "*…4 residential units – his in the rail carriages, a woman + child in caravan, a lady in the gypsy caravan + his son (on p/t basis) in large building*"[50]. My note of the Appellant's response under cross-examination was that it was: "*Not so different. Fine to me*". He admitted he probably was in the carriage at that time. With respect I find this record is materially different because Rohan says he had moved to his flat well before 2015 and there is no other suggestion that he lived there on a part-time basis. It appears to follow that there was nobody residing in the building at that time.

73. Miss Simpson was asked, in the context of the "*Sarah's Space*" sign, about the use of the building. She said that the reality was that the building was owned by 2 people and there is a child who comes in and says he wants the space, such that the use of the building is not exclusive. Parents naturally want to help their children and if I take these statements together I consider this gives an insight into how the building has been used. It has not been shown that the building has been used as a dwelling house even in 2015. It might well have been used by both parents and Rohan as a place to resort to, somewhere to relax or store things, and there might even be some limited residential use. However it was not used as a single dwelling house in the *Gravesham* sense and given that other residents used it the analogy to a facilities block is apt.

74. My view in this matter is confirmed by the clear, dated photographic evidence before the Inquiry that shows that the small railway carriage had been moved back across the Land, adjacent to the other carriage, by 5 December 2014[51]. So on 14 January 2015, when the Appellant admitted in cross-examination that he was probably living in a railway carriage, it is clear that even if it was the small railway carriage it was not positioned next to the building. Mr Noon confirmed in answer to my question that unless the railway carriage was attached to the building in some way that if the Appellant was sleeping there, even if taking his meals in the building, that the use would be the subject of the 10-year rule; I agree. The building was not in use as a single dwelling as,

[48] My contemporary note of her evidence in chief is that she said that she visited 3 or 4 times a week "*after 2014*".
[49] Mr Noon agreed that his note was not passed to the Appellant to agree at the time, but the reality is that the Appellant did not seek to dispute its contents under cross-examination and so I attach the note moderate weight.
[50] Source of quote: page 50 of Mr Noon's proof of evidence.
[51] See photographs on pages 26, 31 and 37 of Mr Noon's proof of evidence, all imprinted "05/12/2014". As Mr Noon said during cross-examination the second photograph attached to Miss Simpson's email dated 11 December 2015 might suggest that the small railway carriage was moved back to this position, adjacent to the large railway carriage, before 21 September 2014, but as I cannot be certain of this date I have relied on the Council's photos.

on the Appellant's admission, he was probably sleeping some 50 m away in one of the railway carriages in the position that I saw at the time of my inspection.

75. The Appellant was also asked about Mr Noon's note[52] of his site visit on 20 July 2015, which records that he, the Appellant, was living in the railway carriages. The Appellant did not accept that as an accurate record and said that he was living in his "*primary residence*"[53], the building, by that date. The photographs attached to Miss Simpson's first statutory declaration are said[54] to date from either side of this visit. Those from May/June 2015 show significant works [30] in progress, including in the vicinity of the bedroom. No personal possessions, such as bedding etc, are evident in these images[55]. Later photographs dated 19 August 2015 are said to show: "*Problems with the whole roof leaking makes for an uninhabitable space*"[56]. The Appellant admitted that he lived in the small railway carriage when he was doing works to the building. The most sustained and substantial period of works, notably to the bedroom area, appear to have been undertaken over the summer of 2015. Viewed in this light, whilst I again acknowledge that Mr Noon's note was not agreed with the Appellant at the time it was written, I am far from convinced that the Appellant has shown that he was residing in the building between May and August 2015. On the balance of probability Mr Noon's note is an accurate record at the time it was made and hence for at least some of the time over the summer of 2015 the Appellant was sleeping in a railway carriage approximately 50 m away from the building.

76. I acknowledge that Miss Simpson's visits actually into the building, as opposed to the Land, during this period might not have detected the Appellant sleeping in there on some occasions. However her photographs give an insight into the condition of the building in 2015 and, as she said during cross-examination, if the floor is up and the mattress is on its side it was not unreasonable for her to draw the conclusion she did from what she has seen during her regular visits. Moreover she said that she looked into the window of the small railway carriage every couple of weeks and saw the bed. Whilst this was not in her diary I find no reason to doubt this aspect of her relatively recent observations of the Land. It is not evidence I can discount when the Appellant's evidence is so imprecise.

77. It is common ground that at some point the Appellant did sleep in the bed in the building. Miss Simpson says it was in 2016, after the significant works to the building were complete and the leaks in the roof were plugged, without needing to collect the dripping water in containers. Since this is significantly after the material date in Appeal B, I am not convinced that it is necessary or possible for me to pinpoint the precise date. Even if the Appellant did reside in the building in the immediate period before the notice was issued, it has not been demonstrated that this constitutes use as a single dwelling because the agricultural use, including storage within the building, has continued at all material times and other residents appear to utilise the building to a greater or lesser extent. The Land still appears to be in a mixed use and so the reference to communal[57] use in the allegation is not inappropriate. Although the Council agreed there would be no injustice if I were to substitute the word shared for communal in the allegation I conclude that there is no need to do so.

[52] Page 45 of Mr Noon's proof of evidence.
[53] My contemporary note of his evidence.
[54] As before, I have seen no verification of their date, but equally the dates were not challenged by the Appellant.
[55] "Photo No 6" and "Photo No 7" appended to Miss Simpson's first statutory declaration.
[56] Source of quote: Miss Simpson's first statutory declaration, with reference to "Photo No 5" [2 images].
[57] Defined as: shared or done by all members of a community or involving the sharing or work and property [Source: Concise Oxford English Dictionary]. It has a separate entry from a commune.

Both appeals: *Conclusion as to what took place as a matter of fact*

78. The key to these appeals has been to establish what has happened as a matter of fact. For the reasons outlined at length above I conclude that the allegation in the notice, i.e. the mixed use of the Land, has occurred as a matter of fact. The Appellant has not discharged the onus of proof that falls on him to show otherwise. Moreover the Appellant's submission is neither precise nor unambiguous; I have given numerous instances of such problems. It must follow that Appeal B must fail because it has not been shown that the building was substantially completed by the material date [32] or that it was used as a single dwelling house even on 15 October 2015, the date of the application.

Appeal A, Ground (d)

79. The enforcement notice was issued on 10 June 2016 and so the material date for this ground of appeal is 10-years prior to that date, namely 10 June 2006. On this basis the onus of proof falls on the Appellant to show that the mix of uses alleged in the notice began prior to the material date and has continued, such that: "…*at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice*" [as per section E. (d) of the appeal form].

80. I intend to deal with this very briefly. It has been shown, on the balance of probability, that the first caravan was not brought onto the Land until after the material date, as defined [17]. The Appellant's oral testimony to the Inquiry was clear that he lived initially in the caravan, as opposed to any other vessel, such as the VW camper van or a railway carriage [19]. It must follow that he cannot demonstrate he has lived on the Land since before the material date.

81. This finding is entirely consistent with his statement at the Inquiry that he did not sell Nimmer Mill until 2013 and that, at least during the period up to 2009, he lived there for approximately half of the time. He said he did most of the work of renovation to the Mill himself and, perhaps understandably, did stay in the building when working on it. That timescale appears to fit with moving the railway carriage onto the Land [60], which the Appellant appears to have used a fair amount of the time, despite saying he initially lived in the caravan.

82. For completeness I have reviewed what Miss Simpson said about her use of the caravan after it was brought to the Land on 26 March 2007. Her evidence was, in this respect, entirely convincing. On the first day she said that she initially stayed in the caravan on the Land in May 2007 and, amongst other things, referred to a friend, Mr Baggs, who stayed in a tent on the Land in July 2007 when he had to use a portaloo because the compost toilet had not been set up by that date. This recollection was broadly corroborated by her rent receipts for the period April to August 2007, which were produced on day 2,when she said she rented out her home as a holiday let, typically for a week at a time, and stayed in the caravan on the Land. As such the initial period of residential use of the Land appears to have commenced in April 2007. Even then the residential use was not continuous. Miss Simpson said that she stayed for one night in November 2007 and that there was a hard frost, which determined that she did not wish to stay another night on the Land over the winter. The Appellant has not shown that he occupied the caravan over the winter of 2007, but even if he had made such a claim that is well after the material date.

83. For the reasons identified I conclude that the Appellant has not discharged the onus of proof to show that the mixed use of the Land as alleged in the notice,

commenced prior to the material date and continued. In finding that ground (d) should fail I have taken account of all of the evidence that has been submitted.

Other matters

84. At the Inquiry the Council resiled from its earlier position that the first caravan [the "*Westmoreland Star*" in the north-west corner of the Land] was lawfully stationed on the Land by virtue of having been there for more than 10-years. With some irony this point does not appear to be in the agreed Statement of Common Ground [Document 6]. It is however reflected in the requirements of the notice because it is the caravan shown in "*Photograph F*".

85. In the light of the Council's change of position I have considered whether this should be reflected in what would arguably be a variation to the notice, but the test in section 176 of the Act is whether such a variation would cause injustice. In this case I am concerned that the Appellant would be in a worse position as a result of having lodged the appeal, if I were to require the caravan to be removed. Accordingly, for this reason, I decline to make such a variation.

86. Moreover my site inspection revealed that this caravan was not being used for residential purposes at that time but was being used generically for storage of what appeared to be items related to the agricultural use of the Land. Even if I am wrong I hope it is fair to say that the caravan has seen better days and, amongst other things, appears to have a plant, perhaps a bramble, growing in through the roof light. The requirement of the notice is clear that the caravan can only be used "*for agricultural use purposes*", which is appropriate.

87. There are a number of inconsequential changes I could make to the drafting of the notice, for example the requirements should arguably say "*Removal…of*" or "*Remove*". As the Appellant observed at the Inquiry, there is also no reference to "*Communal use*" in the requirements, but there is a reference to "*human habitation*" and the communal use appears to be a form of that. As such the notice is clear both in terms of the allegation and the requirements. It is not my role to improve the notice as it deals adequately with the identified breach that the Council has found it expedient to take enforcement action against. For these reasons I find no corrections or variations to the notice are necessary.

Conclusion

88. For reasons given above, and having regard to all other matters raised, I conclude that both appeals should be dismissed and I shall uphold the enforcement notice in Appeal A.

Pete Drew
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Stephens	Chairman, Battens Solicitors Ltd.
He called:	
Clive Miller BA (Hons), Dip TP, MBA (Dist)	Managing Director, Clive Miller & Associates Ltd.
Christopher Black	Appellant.
Johnny Paisley	Appellant's friend.
Lucy Durnan	Appellant's friend.

FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson	Counsel.
He called:	
Adrian Noon BA (Hons), Dip UP	Team Leader, South Somerset District Council.

INTERESTED PERSONS [THOSE WHO ADDRESSED THE INQUIRY]:

John Denning	Local resident.
Sarah Simpson	Joint landowner.

Documents submitted at the Inquiry

1. Letters of consultation, together with a list of persons consulted, and other steps taken by the Council to publicise the Inquiry, including the press advert and a copy and photographs of the site notice displayed at the site.
2. Opening statement on behalf of the Council,
3. Bundle of 7 legal authorities, which are cited in Mr Noon's proof of evidence, the last of which is *Swale* and hence unrelated to the issue of curtilage.
4. Revised layout plan, on which the Appellant made further annotations when giving evidence, which was submitted at the Inquiry by the Council.
5. A copy of the original statutory declaration that was submitted to the Council at application stage by Mr Paisley.
6. Signed Statement of Common Ground.
7. Email dated 5 April 2017 with regard to the caravan at the Trading Post, together with photographs of the same dated 17 October 2006, which were submitted at the Inquiry by the Council.
8. Closing submissions on behalf of the Council.
9. Closing submissions on behalf of the Appellant.